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OFFICE OF PETITIONS

In re Application of :
Chen et al. :
Application No. 09/828,381 : DECISION ON PETITION
Filed: 04/05/2001 :
Atty. Docket No. 9824-062-228 :

This is a decision on the petition styled under 37 CFR 1.137(a) which is treated as a petition to withdraw the holding of abandonment, filed on 29 August, 2006.

The petition is **GRANTED**.

On 23 January, 2006, the Office mailed a non-final Office action, which set a three-month shortened statutory period for reply. In the apparent absence of a timely filed response, the application was held abandoned on 24 April, 2006. Notice of Abandonment was mailed on 11 August, 2006.

Petitioners aver that the practitioner of record at the time the Office action was mailed did not receive the non-final Office action. Specifically, petitioners assert that the Office action was returned to the USPTO as undeliverable.

A review of the record indicates that the USPTO mailed the non-final Office action to the then-correct correspondence address; however, it was inexplicably returned to the USPTO on 2 February, 2006. For this reason, the practitioner did not receive the non-final Office action of 23 January, 2006.

The showing of record is that the Office action was never received because it was returned as undeliverable to the USPTO. As such, there is no abandonment in fact. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition fee will be refunded to petitioners.

As such, the holding of abandonment is **withdrawn**. The application is restored to pending status.

The petition is **GRANTED**.

As petitioners have filed a reply to the non-final Office action mailed on 23 January, 2006, with the present petition, the non-final Office action will not be remailed. Rather, the response filed with the petition will be accepted as timely filed.

The application file is being referred to Technology Center Art Unit 2126 for further processing.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3231.



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